THE PRO-SLAVERY REBELLION.

FROM WASHINGTON.

THE COMPROMISERS' PLAN. ENCOLN'S POLICY UNDETERMINED-THE TARIFF -WAR PROSPECTS.

WASHINGTON, Feb. 19, 1861.

It is safe to assume that the Peace Conven-Son have, after prolonged and laborious and exciting sessions, finally come to the original Crittenden proposition in regard to the partition of the Territories. In a word, they have arrived by a long and circuitous journey to the point at which Mr. Thurlow Weed starte !.

It surely required no ghost to foretell that if any sacrender of the Republican position that Savery ought to be excluded from the Territosies was to be made, it could only be in one brm; and that is by permitting Slavery to exleud into them. The slaveholders have, ever since 1854, claimed the right to carry their shaves into all the Territories, and into all the States as well. But the claim was a mere nomiaal one as respects the more Northern Territories. In these they did not expect to establish

That nominal claim they professed themselves willing to surrender, at the opening of this Session, if they could have the Territory south of the line of 36° 30' guaranteed to them. And the whole controversy since has turned upon the question of whether they should have it. Everything that failed to meet this point, really fell short of meeting the question in its only practical aspect. Clear-sighted men have seen this, and see it still.

If there is to .. any concession which amounts to any thing, it is this: The Gulf-State men insisted as a sine qua non of their remaining in the Union, that the Slave States should not only have all the Territory South of 360 30' which we now hold, but all that we shall hereafter acquire. This was to put their claim in the most radical form, and of course when these Border State Commissioners came together to find some middle ground, they had to lop off so much of the claim as referred to future acquisitions. And this is the way they have reached their present position. Which result, I say, is precisely that which every practical mind said at the start was the only one embodying any coneession worthy of the name.

Everybody who has talked Compromise, has beat about and about this Cape of the subject, sailing up toward it, and then sailing back again, some going a little nearer than others, and some giving it a wide berth, and leaving it uncertain whether er not they would not by a long stretch finally strike away and double it from the furthest point of their recession from it. For so do ships in doubling the Horn, sail far away as they approach its latitude, and taking a broad sweep around the sterms that beset its base, at last make a final tack, and in distant waters, catching a favorable breeze, double on their course, and breasting the urgent sens, plough boldly around the obstruction that they avoided, only that they might more surely compass it.

Some of our Republican statesmen are on this toyage of observation and experiment now, and nothing seems to me more clear than that they are bound round the Cape. In a word, to drop the figure, many who have treated and still treat the question of wuether or no we ought not and must not adjust existing difficulties by a compremise are simply waiting, hesitating, and considering to see whether they will not make the con cession of permitting Slavery to extend into the territory south of 36° 30', and take steps to secure it there. Mr. Weed, who represents this distinct idea

among the Republicans, did not hesitate to advocate it at the opening of Congress. To be sure, it was backing down from the Republican position; but this is neither here nor there. He was evidently acting on the belief that the party was bound to go into a minority any way on the question, and that it was not a matter of conse quence which outweighed national considerations, whether it did it by adhering to its principles or by abandoning them.

In Mr. Lincoln's absence from the center of political thoughts, and away from that theater of action which compels a man, about to seize the reins of power, to dispel all mists and all enchantments with which distance envelopes all things, he has not come down to even a serious contemplation of what he will do, and must do, when he enters the chariot of State. Hence I have said already, in a previous letter, that the policy of the new Administration on this very point of consenting to the extension of Slavery, is still an open question. It is not decided whether or no the Administration of Mr. Lincoln will not give way on this very point of Stavery-Extension.

Please to observe the arguments that are used to show why he should. It is said it was clearly set forth, in Mr. Seward's speech, that Slavery had not, and it was fair to assume never would have, any solid foothold in any of our present Territories. Fourteen years' effort under Slavery Administration and a Slave Code had only put fourteen slaves into Territory fourteen times the size of New-York. Would any given consent that Slavery should go into a region like that be anything but a nominal consent to the extension of Slavery? Such is the argument so far as it relates to this vital point.

But now a new phase of the case is developed. The Confederate States, six in number, have declared themselves a permanent organization, and proclaimed their purpose to oppose "reconstruction," and to maintain an independent existence at whatever cost of blood and treasure.

This new Confederacy is a fact accomplished. But the Border Slave States hesitate to join it. ome, indeed, almost flatly refuse. But these sek that consent to this nominal extension of Slavery into existing Territories be granted, and then they will adhere to the old Union and refuse to join the new. If the grant is made, the Slave States are divided, and the new Confederacy can only enjoy a feeble and tottering existence, and can easily be pressed to its fall. Will a wise man or wise counselors refuse to act on the time-honored maxim of "Divide and conquer?"

Such is the old argument, and such the new, with which Mr. Lincoln will be plied, and under the pressure of which he will develop his

The tariff question is undergoing a discussion of its details. Mr. Douglas says he is going to talk two hours on it yet before it comes to a vote. Discouraged by his success on the theater of abstract political principles, he now essays a briumph in a humbler field. It is difficult to

looks now as though the bill will fail between the Houses, by reason of its tea and coffee duties, its warehousing feature, and its numerous

It is difficult to see how war is to be avoided with the little fighting-cock Confederacy, whose President already threatens Southern powder and Southern steel to anybody who questions its supremacy, unless, perchance, its tone should subside in view.of the hesitation of the Border Slave States to join it. But under any circumstances, whether of compromise or no compromise, serious difficulties are abend. Mr. Stanton's bill, from the Military Committee, reported yesterday to the House, proposes to allow the President to call for volunteers, and so far anticipates the probable necessities of the Government. But whether all such bills will not fail through fillibustering on the part of the Secessionists yet lett in Congress, is an open question. J. S. P.

FROM SOUTH CAROLINA.

THE REBELS WILL ATTACK FORT SUM-TER-A COUNTER REVOLUTION IM-

From Our Own Correspondent. CHARLESTON, S. C., Feb. 20, 1861.

The rebels are going ahead just as though there was no such thing as a Southern Confederacy or Montgomery Convention. Although the whole subject relating to Fort Sumter and the relations of South Carolina (and the other seceded States) with the Federal Government bave been turned ever to Davis, Stephens & Co., the rebels don't mind it, but go right ashead as though they knew nothing about it. They are going to pitch into Fort Sumter any way, whether it suits President Davis or not. The following, from The Mercury of this morning, lays down the line of action, and I give it as semething like an official proclamation:

" What is the duty of the Governor, taking his own What is inc duly of the Governor, taking his own positions? Beyond all question, to take Fort Santer. It is a subject of regret that he did not, if he was prepared, do it before the Constitution of the Confederated States was formed. Is his position altered by the Con-States was binded. In a partial States? Not in the least.
The right of a State, when actually invaded, to rep.1
the invasion, is not surrendered. South Carelina was tavaded by the military occupation of Fort Sunter. Hosthites exist. The invessor continues now. A fortross within our limits is equipped; preparations for war are made, indicating sinister desig. s. A flat refusal is nade to a peremptory demand to discontinue the investor, and to surrender Fort Sunter. What remains but for the Executive of South Carolina to take the fort ! The authorities of the Confederation have the fort? The authorises of the Confederation have nothing to do with it, unless the State is incapable resisting these aggressions, and needs assistance. After two efforts to obtain peaceable possession of Fort Sumter, and a submission for two menths to the insolect military domination in our bay of a bandful of men, the honor of the State requires that no further intervention, from any quarter, should be tolerated, and that this fort abould be taken and taken by South Carolina. alone. By any other course, it appears to us, unless all the positions of the Governor are false, the State must be disgraced.

The Washington correspondent of The Mercury follows up this after the following sharp fashion:

" If, after this speech [by Lincoln at Indianapolis], the Government of the Southern Confederacy chooses to wait on Providence, with the ide expectation that Forts Sumter and Pickens will surrender themselves spontaneously, and trust to recetheir walls fall down, like those of Jericho, at the mere blowing of a parcel like those of Jerisho, at the here blowing of a parcet of rains' horrs, then an excellent start will have been mace-toward ultimate submission and the universal contempt of the diviliance world. Nations care nothing for centiment. They adore course. To obtain their respect you must his jire terror. Verbum sup."

I repeat, therefore, what I have before predicted, as most likely to happen, to wit: Fort Sumter will be attacked with all the means they can command, by the armed multitude, in spite of all the authorities can do, whether at Charleston or Montgomery; and this they will do before the 4th of March. The armed mob, of which I have so often spoken, is about to assert itself, It is the highest authority and greatest power within the circumference of the Seceded States. as you will soon see.

There is a similar state of things concerning the action of the Montgomery Convention on the tariff and slave-trade. The slave-trade idea is the vital one. It is the fundamental purpose; while the military rage is temporary, and will not, like this, endure, break out and over all stops and restraints, and even revolutionize again. In this connection I will mention the letter, published in The Mercury a few days since, by the Hon. L. W. Spratt, a distinguished and very able member of the South Carolina Convention, and Commissioner on the part of that State to expound the objects of Secession to Florida, addressed to the Hop, Mr. Perkins of Louisiana. He proclaims at the outset that the object of the Secession movement was to protect Slavery where it existed, and to strengthen and expand the system by the revival of the foreign slave-trade. He discusses at great length and with much ability the philosophical aspects of the question, and contends that the number of slaves should at least equal the number of whites; and for that reason he deprecates the introduction of free mechanics (mainly from the North) into Charleston as a calamity threatening the worst of consequences. South Carolina, he thinks, is nearer right than any other State or community, where there is "no appeal to the mass, because there is no mass to appeal to; there are no demagogues, because there is no populace to need them." To secure this happy state of things against the possibility of danger, the slave system must be strengthened and extended by direct slave-trade, instead of suffering the introduction of free laborers, who,

says Mr. Spratt, "Will question the right of masters to employ "Will question the right of masters to employ their slaves in any work that they may wish for; they will use the elective franchise to that end; they may acquire the power to determine our municipal elec-tions, and they will inexorably use it; and thus this town of Charleston, at the very heart of Slavery, may become the fortress of Democratic power against it."

Beaten in their grand purpose by the Montgemery Convention, it is but natural that the South Carolinians should declare that if the edict should "be carried into the permanent Government, our whole movement is defeated." Says Mr.

" It will abolitionize the Border States-it will brand our institution. Slavery cannot share a Government with Democracy; it cannot bear a brand upon it; thence another revolution. It may be painful, but we must make it. The Constitution cannot be changed without it. It is doubtful if another movement we be so peaceful, but no matter; no power but the Con-vention can avert the necessity."

Again, Mr. S. proclaims

"That Slavery, as sent forth by the Southern Congress, like the Thrachan horse returning from the field of victory, still bears a master on his back, and, hav-ing achieved one revolution to escape Democracy at the North, it must still achieve another to escape it at

This is the key-note, accepted and taken up by the men who dared to become Rebels, who will insist on their Idea, and who, as Mr. Spratt assures us, if balked, will revolutionize again and persevere till the slave system shall

"Stand serene, erect, aloft, unquestioned as to its rights or its integrity, at some point within the present limits of the Southern States. And, such being the case," adds Mr. Spratt, "it is only for the present

These are not the utterances of a single individual; they are the accepted views of the people of South Carolina, of those without whom she is as nothing, and in view of which the forthcoming session of the Convention will be very

FROM MARYLAND.

VISIT TO FORT MCHENRY. A BLACK CHAPTER-BALTIMORE REPUBLICANISM.

BALTIMORE, Feb. 18, 1861.

I looked in upon Fort McHenry this morning, to pay my respects to Col. Harvey Brown and the other officers, but found none of them in. except Lieuts. Reynolds and Smith. The old Fort is beginning to wear a war-looking aspect, under the auspices of the present efficient officer in command. The barracks are all in household order, and it will not be many days before the armament will be on a complete war footing. Some twenty-odd of the big guns have been mounted on new carriages, and they gape with their black mouths upon every quarter of the horizon. They are chiefly heavy howitzers, 24's and 32's, and some 10 and 13-inch mortars. Piles of black pills begin to rear their pyramidal beads on all sides, and the water battery will soon have its heavy ordnance mounted. A hendred men, now in garrison, are hard at work bringing order out of chaos, so that, let come what may, the stars and stripes will never cease to float from the staff, where it floated when Frank Key was inspired by its sight to indite the world-renowned song, chanting the praises of the Star-Spangled Banner.

When one contemplates this poble old Fort that has never yet fallen into the hands of the enemies of the United States, and sees its parapets bristling with the tokens of the power of the Federal Government, it is enough to make one curse the day that saw the elevation to the Chief Magistracy of James Buchanan, who should have suffered any one of the strongholds of the Federal power to fall into the banes of the encmies of that power. It is evident that the policy of our Government must hereafter be, for the Federal Government to occupy, in sufficient force, all its forts and arsenals, if it would maintain its held upon the affections of the people The policy that would surrender them to the States is a cowardly and treasonable one at best.

To show you how predetermined the South Carolina rebellion was, let me inform you, that an officer of the navy was sent to a station in a distant sea, last spring, was advised and urged by a certain seceding Senator, to bring his ship home into the barbor of Charleston, when he should hear of the secession of South Carolina He refused to promise that, but agreed that he would resign, and has done so. The history of this conspiracy is to be written, and when all the facts come to be known, it will be a chapter in the world's history, that for iniquity and blackness of treason, will have no parallel.

The memory of political men will not be at fault, if I remend them of the threats of the Van Buren dynasty to break up the Federal Government, and prevent Gen. Harrison's inauguration. They who had a part in these times will not fail to remember the effort of Mr. Poinsett, then Secretary of War, to get up a standing army of 200,000 men. Had that scheme been accomplished, the disruption would then have been essayed. Well do I remember the serious concern of the friends of the gallant and truehearted Harrison, after his election, at the threatened resistance to his inauguration, but the time had not then come for the consummation of the work of treason. That black deed was reserved for the reign of the imbecile and traiterous Buchanan, who cheated Mr. Clay twice out of the Presidency by the perpetration of shame less falschoods, and whom Gen. Jackson vainly warned Mr. Polk against.

The Republicans of Baltimore hold their Ward meetings to-night to elect delegates to the City Convention for the ensuing year; and, in this connection, I may note the fact, with some degree of gratification, that with the exception of some three or four out of the thousand Republicans who cast their votes for Lincoln and Hamlin in this city, there is not one of them who has forsaken the faith as written in the Chicago platform! There's fidelity for you, all ye Republicans in the Free States-if there are any such-who have recauted their faith, and gone over to the comprom sers, with Crittenden at their head. Nay, the Republican ranks in this city now number thrice as many as voted for Lincoln in No-

The Secession Convention met this morning. and a slim attendance there was. A strong effort will be made to turn it into a sovereign body, but it will bardly succeed I think.

I learn from Washington that Mr. Lincoln's speeches have stirred up the bile of certain parties at the Capital. They are finding out that he is going to be President! The compromisers are especially exercised, both here and there,

Commander Semmes, late of the Lighthouse Board in Washington, was telegraphed by the late Howell Cobb to come to Montgomery forthwith whereupon he resigned and went, with the expectation, I learn, of being reinstated when the rebels come back !

MISCELLANEOUS.

THE GERMAN REPUBLICANS OF NEW-YORK To the Editor of The N. Y. Tribune. SIR: In to-day's TRIBUNE it is reported that Senate

King (Rep., N. Y.) presented to the United States Senate a petition from the German Republican Association of the City of New-York, asking " that something be done for the preservation of the Union, and that Congress stand by the Constitution and laws." The pention herein referred to is the memorial of the German Republican Central Committee of this city, and the object and the contents of this instrument are very materially misetated by the words above quoted in italics. The said memorial is not a compromising petition in the sense of our professional Union-savers, as it would seem by the above report. It does not ask " that something be done for the preservation of the Union," but on the contrary the said memorial asks "that the Union shall be preserved by uphelding the Constitution as it is and by enforcing the lanes;" and it argues that the Union cannot be preserved inviolate by compromising away the genuine anti-Slavery spirit of the Constitution upon which the Union of the fathers rests. And it further says, that the body of a Union preserved by such means would henceforth be merely a bogus Union widely different from that Union to which the adopted citizens have sworn allegiance. This much in vindication of the German Republicans of this city who are to a man opposed to all tinkering messures, and to all cowardly compromises with rebels, and who express these send ments plainly in the memorial presented by Senator New-York, Feb. 19, 1961

prognosticate a result with certainty, but it actors to determine whether they will contribute or be THE CANADA EXTRADITION CASE. ANDERSON DISCHARGED.

> From The Toronto Globe, Feb. 18. COURT OF COMMON PLEAS.—Before Chief-Justice DRA-PER, Mr. Justice RICHARDS, and Mr. Justice HAGARTY. At 12 o'clock on Saturday the Court of Common Pleas

was crowded to hear judgment pronounced in the case of the fugitive slave Anderson. The prisoner, instead of being placed in the body of the Court, as upon previous occasions, was accommodated with a sest within the semi-circle devoted to the use of the Queen's Counlow listened with intense anxiety to every word which fell from their lips, but we imagine understood little until the appliance which greated the conclusion of each junguent assured him that their lordships had decided in his favor. sel, immediately in front of the Judges. The poor feln his favor.

Ania the most profound silence Chief-Justice Draper
ii: The prisoner is home

esid: The priseder is brought before us on a wit of tabeas corpus directed to the Sheriff of the County of Brant. The return of that officer shows that the prisoner was committed and is detained inclusively for the following causes: First upon a warrant as follows:

"Pownes or Canada, Cousta or Brant—To all or my of the Constables or Peace Officers of the Cousty of fixed, and to the Kepper of the common Jan of Brantford, in the said Country of fixed.

to the Keeper of the common Jah of Brantford, in the said County of Brant.

Whereas, John Anderson was this day charged before us, two of her Majest's Justices of the Feace for the said County of Brant, on the said of William C. Baker of Howard County hissord, and others, for that he, the said John Anderson, did it lowerd County, in the State of Misseuri, on the 28th day of September, 1853, willfully, maliciously, and reloniously stab and kin and Senecar T. P. Diego of Howard County.

"There are, therefore, to command you, the said constables, or rease efficies, or any of you, to take the said John Anderson and safely convey bim to the common jail at Brantford, afterwish is there deliver him to the keeper thereof, together with this precept.

And if do hereby command you the said keeper of the said.

his precept.

And i do hereby command you the said keeper of the said

And i do hereby command you the said love and to your

And to necessary of the said John Indexen into your outdoor, in the contion just and there safely keep has until he hall be thence delive ed by one course of law.

Given under my head and seal, this 24th day of September, a the year of our Lord, 1800, at firstford, in the County of

"W MATTHEWS, J. P.
"HENRY YARDINGTON, J. P.
"JAMES LANGILLEY, J. P." Second : Upon a rule of the Court of Queen's Bench

Second: Upon a rule of the Court of Queen's Bench of Upper Canada in the words following:

"In the Queen's Bench, Epper Canada, Couning Brant—Mich. Tem., 24 * ictoria.—John Anderson being brought here into Court in the casaday of the Sheriit of the soid County of Brant, by titue of a wik of Jabeas corpus, it is ordered that the said writ and the return thereth be hied. And upon resading the several informations upon eath of William C. Faker, Thomas D. Diggs, Ber jao in Hasilaburer, J. A. Hainday, a man named thill, and lierjamm F. Diggs, returned in chedience t. a writ of serious I directed to Will in Mix these, e.g. one of her Majesty's Justices of the Freez's and for the county of Brant, and apon he ing consel for both cides, it recordered that the said John Acterson her issue if the frame in the common july of the said County of Brant upon the warrant by which be ash been by I in deanned to tenam in the common july of the said County of Brant upon the warrant by which be ash been by I in deanned to tenam in the common july of the said County of Brant upon the warrant by in the said county of Brant upon T. F. Diggs, according to the treety between her Majesty and the United States of America or of the State of America or T. Diggs, according to the treety between her Majesty and the United States in Canada, passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and passed in the 12d year of her Majesty and the United States of Massed year of the 12d year of her Majesty and the 12 The informations, depositions, proceedings, and evi-

pon a writ of certionari.
The following objections were taken to the warrant

Commitment: That it was not issued in conformity with the fatute, because,
First: It did not contain a charge of murder, but

merely of felonious homicide; whereas, the treaty and Score That it was not expressed to be murder.
Score That it was not expressed to be for the purpose of surrender, but only until the prisoner should be dicharged by due course of law, whereas, the statute requires both.
There: That the megistrates had no jurisdiction utless and must be recovered.

ulers and until the principer had been charged with the crime in the forekin country where it was alleged a have been committed. It was objected to the rule of the Court of Queen's

It was objected to the rate of the court of queen a Bereit that none of our tribunals, Justice, or magi-rates had any inherent original jurisdiction over crines committed in a foreign country. That the only actionly in such come is derived from the shaute pasted for carrying the treaty into effect, and by that durant, though power is given to Judges and Justices of the Pence; it is given for certain specified purposes, and the Country of which the Judges may be in-inhere,

and the Couris, of which the Judges may be members, are not empowered to do any one of the notatio electricate the treaty.

During the argument it was further suggested that the statute makes the decision of the Judge of Justice of the Peace upon the selfinency of the evidence to require or justify the compositual of the presence, continuity of far as that it cannot be revived by any other Judge or Court, though not necessarily conclusive on the Government, whose daty it will still be to decide upon a review of all the circumstances, whether they will surrender the prisoner.

As to the matters appearing on the return to the certionari, the objections may be clarged under two general heads:

ers) heads: First: The insufficiency of the evidence to establish

case of murder.

Second: That enough appears to show that, according to the laws of the Province, the prisoner had not committed mander.

Upon the face of the warrant, and of the rule of the

Sourt of Queen's Bench, it sofficiently appears that here is no juried; thou in the Province to try the pris-mer on the charge stated. But for the treaty and our talute, the processings both before and since the com-

and ment by the magnistrate would be coron non judge, and upon the har cas corpus the prisoner would be entitied to his discharge.

committed against our own laws, whatever right any Court, Judge or other magistrate has to deal with the care, he is given by the statute—it does not exist other-Wise.

The first section of an act (passed in May, 1849, con-

the first section of an act (passed in may, 1949, con-idented sintintes o. Canada, chapter 89,) reads thus: "Upon compaint made under eath or affirmation, charging y prise no food within the limits of the Frechoe with having multiple whim the puriodiction of the United States of Augst-or any of said States, any of the crimes enumerated or pro-

It is plain from this sec ion that the proceedings for the arrest of a party, with a view to his surrender, may be commenced in the Province, and the party "so charged, i.e. upon complaint made before any Judge or Justice of the Peace, may be committed to remain in prison until such surrender be made. The third objection to the warrant appears, there-fore, to want toundation.

The crimes specified in the treaty are murder, pi-racy, green, foreery, or the unterpass of forced, com-

The crines specified in the treaty are burder, paracy, area, forgery, or the interance of forged paper.

There is no jurisdiction to take a complaint, to issue a warrant of apprehension, to hear and consider the evidence of criminality, or to commit, except for one of these offenses.

The warrant of commitment states that the prisoner

The warrant of commitment states that the place is charged, for that he did willfully, maliciously, and felouiously stab and kill one Senaca T. P. Diggs.

Does this charge an offense within she act I

This would be an insufficient statement in an indict-

This would be an insufficient statement in an industriement for murder in any of our Courts, because it is equally indispensable to use the artificial term "morder," as it is to state that the offense was committed "with malice aforethought;" so much so that by the onission of either one or the other the accused would be liable to no more than a conviction for manishinghing the court of the word "will" this warrant would ter. But for the word "kill," this warrant would rather charge a malicious stabbing than any other felony, while the same word kill excludes the possibility of treating the warrant as provided on a charge of assault with intent to murder. It is true that in the same soult with intent to morder. It is true that in the same warrant the same particularity is not requisite as in an indictment, and it is said in effect (I Hale, 122) it need only contain the special nature of the felony briefly, as "for felony for the death of J. S., and the reason is, that it may appear to the Judges of the King's Bench that it may appear to the Judges of the King's Bench apon habeas corpus, whether it be for felony or not." But this rule and the reason for it do not, in my humble judgment, govern a case like the present, where the jurisdiction does not extend to all felozious homicides, but is, on the contrary, limited to one kind of homicide expressed by its technical name "murder." In the exception of a statutory power thos limited, the words of the statute should, I think, be adhered to, in order that, to adopt the language as above quoted, it may appear to the Judges upon habeas corpus, whether the offense charged be within the statute or not.

In my epinion, therefore, the warrant is defective in not stating that the prisoner was charged with murder. The next objection to the warrant of commisment is the omission in the combision to direct that the prison-

e omission in the conclusion to direct that the prison-shall remain in jail until his surrender upon the equi ition of the proper authorities, or until he should e di-ci argad according to law. It is I id down as a general rule deducible from and

It is hid down as a general rule deductor and onlined by numerous authorities, that where a man a committed for any crime, either by common law or convicted by Act of Parliament, for which he is punchable he is distanced, then he is to be committed that convicted by Act of Parliament, for which he is pun-ishable by ludictment, then he is to be committed this cischarged by due course of law. But where the com-mittal is in pursuance of a special authority, the terms

of the commitment must be special and must exactly pursue that authority—(Mark's case, 2 W Bl., folio 805, Finlay's case, 1 Salk, 331; Brucey's case, 1, L. Ray, 98; Hollinsbend's case, 1 Salk, 321; Baldwin and Blackmore, 1 Burr., 602; R. va. Brown, 8; R. vs. Brown, 8; R. vs. Brown, 8; R. vs. Cach, 583; R. vs. York, 5, Burr., 2,684; Miller's case of W Bl. 881)

Leach, 503; R. vs. 2008, 2008.

2 W Bl., 881).

The case most resembling the present as to this point is that of the exparte Besset (62 B, 481), which I had not seen when I granted this writ of habeas corpus. My attention was first drawn to it by the learned Chief Justice of the Queen's Bench, as a case which was not Justice that Court on the application to them

Justice of the Queen's Bench, as a case which was not under the notice of the Court on the application to them for the prisoner's discharge, nor in fast was the point raised at all under their consideration.

It appears by that case that one Basset was brought up on on habeas corpus, and the return showed that he was committed by a warrant from the Lord Mayor of London, under the authority of the British statute 6 and 7 Vic., cap. 75, which was passed to give effect to a convention between Great Britain and France, closely resembling that between Great Britain and the United States. The objection taken to the commitment was that it concluded, "and here safely kept until he shall be discharged by due course of law." The authority against the person so was that it concluded, "and here sa'ely kept until he shall be discharged by due course of law." The authority given by the set was to commit the person so accused to "jail, there to remain until delivered pursuant to such requisition as aforesaid." The Court held the objection to be fatal, and discharged the pris-

Our statute directs that the Judge or Justice of the Our statute directs that the Judge or Justice of the Peace "shall besse his warrant for the commitment of the person so charged to the proper jail, there to be remanded until such surrender be made, or antil such person be eischarged by due course of law." Unless it can be held that the latter words include or are equivalent to the former, this case cannot be distinguished from that of ex parte Besset. But we are bound to give effect to every word in the set, and it is too obvious to require argument, that the Legislature meant to provide for the surrender of the prisoner, and for his discharge, if his surrender was not duly required, with that view they made the double provision—some part of which has been overlooked and committed in the warrant. I consider the warrant of commitment defective on this ground also.

omitted in the warrant. I consider the warrant of commitment defective on this ground also.

The rule of the Court of Queen's Bench, however, which is returned to us as one of the causes of the prisoner's detention, is free from every objection of this character; and if the Court had authority to make such a rule, it affords a complete answer to the application for the prisoner's discharge, unless upon the broader questions raised, which involve the discussion of principles of the highest character. But this rule is objected to as being beyond the power of the Court, and I enter, somewhat unwillingly, upon its consideration. We are in effect called upon to review and supersede the action of a Court of coordinate jurisdiction, and not in an appellate but an ordinary character. tion, and not in an appellate but an ordinary character. But we have no alternative, for the prisoner has a right to the benefit of our opinion, if it should be in his

There can be no doubt as to the authority of the Coart when a prisoner, charged with felony, is brought before them on a writ of habeas corpus, to look not merely at the commitment but also at the depositions, before they either bailor discharge him, in order to see whether there is sufficient evidence to detain him in custody; and it is said in R. vs. Hower, I Leach: "The court in such a case never gave a judgment whether the cost of in such a case never gave a judgment whether the facts amount to felony or not, but merely whether enough is charged to justify the detention of the prisoner, and put him upon his trial. The law is thus stated in R. agt. Marks, 3 East, 157.

The law is thus stated in R. agt. Marks, 3 East, 157.

'Though the warrant of commitment be informal, yet it upon the depositions returned, the Court see that a felony has been committed, and that there is a reasonable ground of charge against the prisoner, they will not bail but remand him. The same rule applies with respect but to the law and the fact; unless we see from to doubt the truth of the fact charged, the prisoner must be remanded, and the same consequence follows, unless we see reason to doubt whether the fact charged constitute any offense within the law."

The same panch le is afformed in exparte Page, and in K. agt, Gordon, and an analogous case was followed.

The same panel, le is afterned in ex parte Page, and in R. agt. Gordon, and an analogous case was followed in R. agt. Richards, in ex parte Cross, and in re. Smith (1 B and A, 568 and 572, 5 Q B 926, 2 H and N. 354, 3 do. 227).

These authorities, to which it would be easy to add many ofters, conclusively show that the course followers.

many otters, conclusively show that the course fol-by the Court of Queen's Bench is warranted by prin-iple and suthority, wherein the case is one within their ordinary jurisdiction.

remaid the prisoner on the magistrate's warrant, or to commit it n by the authority of the Court alone. After a long and most anxious consideration, I have formed the opinion that the rule is not maintainable in cities view. I have already given my reasons for thicking the warrant defective, and if the personer be-remanded exclusively on that, he should be discharged. The rule does not profess to amend the warrant, and

This point merits full examination. We have the advantage of the decision already mentioned in the case of cx ports. Besset, which, as I have remarked, was not adverted to by any one concerned in the matter, until after the with by which the prisoner is now

rous was issued. he British statute 6 and 7 Vic., ch. 75 (to which I anve before referred), "upon a requisition from the French Sovereign within the terms of the Convention, or through either of the principal Secretaries of State, or some other high functionaries, by warrant to signify that such requisition had been made, and therefore it shall be lawful for any Justice of the Peace, or other person having power, to commit for trial persons accused of crimes against the laws of that portion of her Majesty's dominions, in which such supposed offender shall be found, to examine upon oath any person or persons touching the truth of such charges, and upon such evidence as according to the laws of that part of her Majesty's dominions as would justify the apprehension and committal for trial of the persons occursed. if the crime of which he or she shall b then there committed, is shall be lawful for such Jus-tice of the Peace or other person having power to com-nit as aforesaid, to issue his warrant for the apprehenon of such person, and also to commit the pe

succused to jail, there to remain until delivered, pur-suant to such requisition as aforesaid."

Upon this statute Besset was committed, and in en-Upon this statute Besset was committed, and in en-deavoring to sustain the commitment counsel suggested that the Court would look into the depositions on which the warrant was granted, and if they showed a crime had been committed would remmad the prisoner. To which Wightman J. replied: "That could only be where a crime appeared for which trial might be in the country." Lord Denman said: "The deposition was nothing to us unless within the statute," and Coleridge J. asked: "Does the statute give any power of the kind to us?" And in giving judgment to discharge the prisoner Lerd Denman, according to the report in The Jurist, said: "Neither this Court nor the Jailer The Jurist, said: "Neither this Court nor the Jailer in whose custody the prisoner is brought before us, bas any power over that incividual except what is given by the recent set of Parliament, and the warrant of commitment has been drawn up in such a manner as to deprive these parties of any power to detain him. The Court has been requested to remand the prisoner because it is alleged that he has been guilty of some crime, but the Court knows nothing of any crime unless it is brought before us by the warrant, or I should rather say we have no authority of the kind in such a case. If we could have acted in the manner suggested the statute would have been nancecessity."

Unless there be a difference between the British Act offices there be a difference between the British Act name is, in my opinion, designe. And I perceive no difference worthy of notice, except that in the British statute Justices of the Peace and other persons having statute Justices of the Fence and other persons are map power to commit for trial persons accessed for crime, are empowered to take the proceedings pointed out against the supposed offender, while in our Act any Justice of the Superior Court in this Province, or any Justice of the Peace within same, may do so. It cannot, I think, be successfully contended that these words onter any new power on the Superior Court, though ney do so expressly on the individual Judges, and in y opinion the general ordinary powers of the courts cannot be extended by implication to cases arising under our statute, any more than the corresponding powers of the Court of Queen's Bench in England could be so extended under the British Act.

It is true it does not appear in ex parte Besset that the depositions were before the Court. I infer they were not; but, neverthelees, the language used by the Judges clearly expresses to my mind their opinion that they had no authority to lock at them for the purpose of supplying any direct in the warrant.

they had no authority to look at them for the purpose of supplying any defect in the warrant.

The result is that, in my opision, the return of the writ of habeac corpus shows no sufficient ground for the prasoner's detention. He ought, therefore, to be discharged, and whatever conclusion I might arrive at on the more general grounds urged in his behalf, the result would be the same.

I have, so far as the limited time and the pressure of the business during the week would permit, considered some of the questions involved. I have at least been able to appreciate the difficulty of disposing of them. One doubt arises on the threshold, namely, whether the statute gives the Court power to look into the depositions and to adjudge whether they contain evidence of criminality sufficient to sustain the charge of marder. It is easy to suggest objections to the placing the power criminality sufficient to sustain the charge of murder. It is easy to suggest objections to the placing the power of exclusive and final adjudy ation on this point, in the hands of a single Justice, even although his decision is not binding on the Government, to whom he must certify the same and the evidence, and on whom rests the ultimate responsibility of surrendering or refusing to surrender the prisoner. Still, however weighty I night deem such objections, if the statute does confer that jurisdiction on a single Judge or Justice of the Peace, the statute must be obeyed. And I am free to confess that there is some difficulty in affirming that this Court can review the decision of the Judge or Justice without

running counter to the opinion expressed in expansion

But conceding that we have that province, and as a necessary incident to it to bring the depositions before us by certiorars (as to which some technical objections may be suggested). I require further time before I can adopt as a principle of the law, that because a man is a slave in a country where Slavery is legalized, he is legally incupable of committing a clime, that he is not to be deemed a "person" who may be charged with an oflense. Nor am I prepared to decide that on a charge of murder sufficiently sustained by evidence to warrant his being committed for trial according to our law, the presoner accused of that crime would not be within the meaning of the treaty, because if acquitted warrant his being committed for trial according to our law, the presence accused of that crime would not be within the measing of the treaty, because if acquitted on a trial in the country where the accusation arcse, he would be detailed in bondage as a slave, or because it might be feared, and even with reason feared, that because he was a slave he would not be treated in the same spirit of justice and in-partiality as a freeman before the tribunals of a foreign State where Slavery is established by local law. Of, to take a possible case to arise in a Free State, let it be supposed that a slave first from a Slave State into a Free State whose law, hevertheless, unlike our own happy institutions, take the fugitive kill an officer of the Free State who is endeavoring under regular process to arrest and detain him with a view to his surrender, and having killed the officer exences into this Province, I do not yet see any way to the conclusion that we could hold the case not to be within the treaty and the act so clearly not to be murder, that there would be nothing for a jury to try, but that the Court could dispose of it as a pure question of law. For if there he a question of fact to be tried, I apprehend he most be surrendered, as such duestion of his very beautrendered, as such question could only be tried in the country where the fact arose. These and other similar quotations are of too serious

These and other similar quotations are of too serious a character to be decided upon impulse or in haste, and I do not scruple to say that so long as the prisoner sustains no prejudice by the delay, I desire to defer pronouncing an opinion upon them. I am reluctant on the one hand, where the accuser does not make it indispenable to declare that each individual of the assured number of 4,000,000 of slaves in the Southern States may commit assassination in aid of his escape on any part of his route to this Province, and find impunity and shelter on his arrival here. I am reluctant, on the other hand, to admit that Great Britain has entered into treaty obligations to surrender a fugitive slave other hand, to admit that Great Britain has entered into treaty obligations to surrender a fugitive slave who, se his sole means of obtaining liberty, has shed the blood of the merodess taskmaster who held him in bondage. An occasion may arise when it will be my duty to adjudge one way or the other. But the necessity does not exist at present, and I am not afraid to avow that I rejoice at i. I am, however, glad that the discussion has taken place, that the doubts and difficulties at suggests have been brought prominently forward. The power of dealing with them is in the hands of others, and the necessity of dealing with them hands of others, and the necessity of dealing with them must, I timk, be felt by those who possess the power. Mr. Justice Richards said—It seems to be generally conceded that unless there are treaty significant to conceded that unless there are treaty significants to that effect, one nation is not bound to deliver to another fugitives from justice seeking refuge in the territories of such Power. Mr. Justice Story, in his "Conflict of Laws," p. 522, states that Lord Coke expressly maintains that the Sovereign is not bound to surrender up fugitive criminals from other countries who have sought a shelter in his dominions. Mr. Phillimore, in its recent very el-blorate work on International Law. sought a shelter in his dominions. Mr. Phillimore, in this recent very elaborate work on International Law, observes, p. 411, "France, Kassia, England, and the North American United States, have constantly, either by diplomatic acts or decisions of their tribunals, expressed their opinion that apon the principles of international law, irrespective of treaty, the surrender of a foreign criminal cannot be demanded." He addatine result of the whole consideration of this subject is, that the extraolition of criminals is a matter of country, not of right, except in cases of special convention. I apprehend there can be no doubt that if it were not for the treaty and the Act of Parliament carrying it out we would not be obliged to discharge the pinsoner from custody, although it was liament carrying it out we would not be obliged to discharge the prisoner from custody, although it was clearly shown that he had committed nurder in the State of Missouri. If it does not appear that he has committed some offense against the Queen's pears, we have no right to detail him except under the authority of the act of Parliament. We must look then to the statute to see if this prisoner is charged with any offense under it, and if he had been committed according to its terms. It is objected that the statute requires that the prisoner should be charged with murder, and that he should be committed to the Jail, there to remain until he is surrendered, we rere the words used in the mittimus only imply a charge of man-laughter, and by the warrant be stands committed until delivered by duccourse of law. There is no doubt that if the offense charged is not murder, then the prisoner must be course of Lew There is no doubt that if the offense charged is rott murder, then the prisoner must be discharged; and it is equally certain that the statute prescribes that if the Magistante deemed the evidence sufficient to sustain the charge, he ought, among other things, to have committed the prisoner to the proper jail, there to remain until he was surrendered, or until he was discharged according to law. The words of the warrant, which states the charge as to the prisoner, are, that he did in Howard County, to the State of Missouri, on the 28th of September, 1853, "willfully, malkdowly and felo-loudy stab and kill one Seneca T. P. Digges." It these words were the only ones used by which a charge of murder was hid in an indictment, it would be clearly bad, as well on account of the omission of the allegation that the act was done of malice aforethought, as of the further omission of the allegation that the risoner had murdered the said Digges. In "Russell on Crimes," it is stated at p. 470, vol. 1. "It is necessary to state that the act by which the death was occasioned was done feloniously, and especially that it was done of matice of orethought, which is the greatest characteristic of the crime of murder, and it must also be stated that the prisoner mardered the which states the charge as to the prisoner, are, that he

the greatest characteristic of the clime of narder, and it must also be stated that the prisoner mardered the occessed." It is still necessary under our own statute (Con. Acts, 22 Vic. cap. 59, sec. 23), in an indictment for murder, to state that "the prisoned did feloniously, willfully, and of his malice afore thought, kill and murder the deceased." It is not, however, as a general rule, necessary in a warrant of commitment to charge the offense with the same cer-tainty as in an indictment, and where it sufficiently commitment to charge the offense with the same ceft thinty as in an indictment, and where it sufficiently appears from the warrant and depositions that a felony has been committed, the Court, though the warrant be defective, if the offense be one committed against the Queen's peace, will recommit the prisoner under a warrant of their own. But in these cases a felony must be clearly shown to have been committed; if that is not the case, the prisoner will be entitled to be bailed or discharged. Now here, so far as the right to appear that be is charged with nurder; for it charged with a less offense, though that be a felony which is not within the treaty, he cannot be detained. If the charge is not clearly one of murder, and it is doubtful if manslaughter or murder is charged, then I take it the general rule must prevail that that interpretation must be given which is most in favor of the liberty of the necused. If it had been charged against the prisoner that he did willfully and feloniously stab and kill Sensera. T. P. Digges, to is would only be a charge of manslaughter, and the prisoner without doubt would be discharged. Does, then, the introducing the word maniferanty into the charge show that the prisoner is charged with the crime of murder? Two essential ingredients seem still wanting to make the charge clearly that of nurder, viz.: That the malice should have maleciously into the charge show that the prisoner is charged with the crime of murder? Two essential ingredients seem still wanning to make the charge clearly that of murder, viz.: That the malice should have been aforethought, and the killing should have been alleged to be murder. The general definition of many slaughter being "the felonious killing of another without malice, expressed or implied," it would seem that the allega ion that the prisoner did maniciously stab and kill Diages would afford a strong argument that the charge was not one of manshaughter. But the emission to charge the malice as "aforethought" may in the same way be urged to support the proposition that the charge is not for murder, which it ought to be to justify the prisoner's detention. As this proceeding is one taken under the statute, it can only be sustained so far as it is in accordance with the act. The treaty which the statute arries out refers to persons charged with the crime of murder, not manshaughter, and these are to be surrendered. The offense charged ought to be plainly stated. There would be no difficulty in stating that the prisoner had been charged with marder if the magistrates intended that he should be surrendered for that crime. The charge is not so made, and if the language in which it is stated differs from the treaty, it ought to be clear and explicit, so as to be beyond all doubt. The words of Ashborton, J., in the King agt, Judd, 2 term reps, 256, seem to me peculiarly applicable. He says: "Whatever words the Legislature used we must suppose that they knew the meaning of them, and if a Justice uses the same words, we are bound to suppose that the intended them in the same sense, but if he tice uses the same words, we are bound to suppose that he intended them in the same sense, but if he the uses the same words, we are bound to suppose that he intended them in the same sense, but if he makes use of other words he must be more precise." Here the Justices have made use of other words, and as they are not more precise on this point, though not entirely free from doubt, I think the warrant bad. As to the next objection, the omission in the commitment to direct that the prisoner should remain in juil until the surrender should be made as required by the statute (Bessets' case; 62, B.), is a strong authority in favor of the prisoner, and unless we are prepared to overrule that case we must consider this objection stat. In Mash's case (2 Sir W. Blackstone's reports, 800), the doctrine applicable to the question as to the necessity of inserting the words "until delivered by due course of law" is thus clearly laid down: "The true distinction is that where a man is committed for any crime either at common law or created by act of Parlament, for which he is punishable by indictment, then he is to be committed till discharged by due course of law; but where it is in pursuance of a special authority the terms of the commitment must be special and exactly pursue that authority." But the omission of the words referred to suggest to my mind a still graver difficulty, and not one of a merely technical character. There is nothing before us to show that